IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 738 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

1.JADEJA HARPALSINH DILIPSINH

2.JADEJA JAYENDRASINH DILIPSINH

3.ABHAYSINH DILIPSINH

Appearance:

MR. N.D. GOHIL APP. for Petitioner

MR KR RAVAL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 12/01/2001

CAV JUDGEMENT

1. This is an appeal filed by the State of Gujarat against the order of acquittal dt. 30.04.1992 passed by the Judicial Magistrate First Class, Surendranagar in Criminal Case No. 727/1989 read with Criminal Case No. 2605/1998. The charge against the accused respondents is of having committed offences under section 325, 504 and 114 of the Indian Penal Code.

2. The brief facts of the case are that on 06.08.1998 at around 21 hours when the complainant, namely, Kiran Krishanalal Bhatt was going on his scooter from Alka Society Chowk, accused no. 1 stopped him and stated as to why false allegations were being levelled against them and he got excited and gave a blow of stick just above the ankle of right leg and caused fracture. It is further the case of the prosecution that accused no. 2 gave abuses to the complainant and alongwith accused no. 3 all the accused abetted each other in committing the offence. In this connection, the complainant gave complaint to the police and First Information Report was lodged. The complainant also gave a private complaint in the Court and the said complaint was registered as Criminal Case No. 2605/88 and on the basis of the subject matter of both the complaints being same, the Trial Court has consolidated both the Criminal Cases at the time of hearing. In both the Criminal Cases the charges in respect of the alleged offences were framed against the accused and the accused have denied having committed any such offences.

3. The Trial Court framed the following issues and answers of each of the issues are respectively as follows:-

Sr. No.	Issues	Answer
1.	Does the prosecution prove beyond doubt that accused no. 1 gave blow with stick above the ankle and caused fracture resulting in grievous injury on the day and time of the alleged incident?	Negative
2.	Does the prosecution prove beyond	Negative

doubt that on the day and the time of the alleged incident accused no.2 abused the complainant?

3. Does the prosecution prove beyond doubt that in committing these offences all the accused abetted each other? — Negative

4. What order — As per final order

4. The complainant has stated in compliant (Exh. 30) that on the day and time of the incident he was returning home at around 8 P.M.. on his scooter and Near Alka Chowk accused no. 1 stopped him and stated that the complainant had become dada and accused no. 1 got excited and gave a stick blow above the ankle. At that point of time accused no. 2 who was present there started abusing the complainant, and because of this a crowd gathered and there was commotion. Therefore, Prakashbhai, the elder brother of the complainant and father of the complainant, Krishnalal arrived there and because of this the accused left the scene of the incident. The incident had been witnessed by Prakashbhai and Krishnalal Mulshankar Bhatt and therefore the complainant, accompanied by his father and brother went to the police station and lodged complaint. In the complaint it was further stated that previously also the accused had tried to assault the complainant but he had not made this fact known to anyone.

5. During the trial the complainant was examined on oath (Exh. 29) wherein it is stated that when the complainant was going home at around 8.30 P.M. accused no. 1 was also going alongwith someone else on the road and the accused no. 1 started abusing the complainant and threatened to beat him up. It is further, stated that the complainant thereafter started his scooter and thereupon the accused no. 1 threw the stick at the complainant which hit below the knee of the right leg but nobody intervened to save the complainant. The complainant further deposed that after the incident he went home and informed his father; that the house of the complainant is about 100 ft. from the scene of the incident. The complainant and his father went first of all to Gandhi Hospital and thereafter to C.U. Shah Hospital for treatment.

6. As stated hereinbefore the complainant has also

lodged a private complaint which was registered as Criminal Case No. 2605/88. In this complaint the complainant has no where stated that accused no. 1 had abused him or threatened to beat him up and this fact is accepted by the complainant in his deposition. In the cross examination the complainant admits that in the chowk where the alleged incident occurred there were many persons present and there are number of shops also which were open. It is further stated that it was only after the complainant proceeded 3 to 4 ft. ahead that accused no. 1 had stopped him. The Trial Court has further found that the complainant has no where stated anything about presence of accused nos. 2 and 3 in the private complaint and moreover whatever evidence by way of oral deposition is given is in relation to accused no. 1 only.

7. The Trial Court has thereafter referred to the depositions of Krishanalal Mulshankar Bhatt, father of the complainant as well as Prakashkumar Krishnalal Bhatt, brother of the complainant. It has been found that their presence at the time of the incident is doubtful in as much as, the complainant himself has stated in one place that after he was hit with the stick he went to the house and informed his father and thereafter accompanied by his father and brother he went to obtain medical treatment. While the depositions of the father and brother, show that it was on account of commotion that they had come out of the house and reached the chowk which was at a distance of about 100 ft. from the house and that is how they witnessed the incident. In their depositions both father as well as brother have stated that there was crowd of about 20 to 25 persons at the place and time of the incident but none had come forward to intervene and save the complainant; it is further stated that some of the persons were known to the complainant and his family members and though the names of such persons are mentioned in the deposition no such information is stated in the complaints lodged with the police or the Court.

8. The Trial Court has taken into consideration the evidence in the form of both the complaints relating to alleged incident, depositions of the complainant, his father and his brother; it has also taken into consideration the Medical Certificate and the depositions of Medical Officers of the two Hospitals where the complainant took the treatment as well as the depositions of the Investigating Officer. These evidences have been analysed and dealt with by the Trial Court at length in its judgement under appeal and this is over and above the other evidences which have been appreciated. On

consideration of the entire material and evidence available on record the Trial Court has come to the following conclusions:-

a. That the complainant has never stated that the accused had tried to assault him prior to the day of incident.

b. Nothing has been stated about the presence of accused nos. 2 and 3.

c. That the complainant in his deposition has not stated that his brother and father had come to the scene of incident and intervened to save him.

d. That the complainant has not stated that accused no. 1 had abused and threatened as detailed in the private complaint.

e. That the complainant has not stated anything in relation to earlier incident of 04.06.1988 which has been referred to by the father of the complainant in his deposition.

f. That Prakashbhai, namely complainant's brother, has stated that the accused were harassing and molesting his sister and that his father had [scolded the accused, but this aspect has not been stated by the complainant in any of the two complaints or in his deposition.

g. That in support of Prakashbhai's version the complainants sister has not been examined.

h. That the complainant having not referred to the past incident either in any of the two complaints or in his deposition, it was not permissible to connect the different incidents and treat the occurrence of the alleged incident as in sequence.

i. That the complainant has stated that after he was hit he went home and informed his father. While the father and the brother in their respective depositions stated that they reached the place of the alleged incident on hearing the commotion.

j. As per the medical evidence the injury to the complainant could have been caused by a stick blow or by a hard and blunt object if his scooter had dashed against another vehicle/object.

k. That though Prakashbhai has given names of certain persons said to be present at the time of the alleged incident none of them have been stated to be present in either the complaint or in the deposition of the complainant.

l. Moreover, none of such persons have been examined by the prosecution even though the said person were independent witnesses.

m. The Investigating Officer has specifically admitted that name of accused no. 3 does not figure anywhere in the complaint or during the course of investigation.

n. That though Prakashbhai has stated in his deposition that he and his father went from their house to the scene of incident after hearing the commotion yet, they have not stated so before the Investigating Officer when their statements were recorded.

o. The Investigating Officer admits that near the alleged scene of incident there is a bus stop, there are number of shops and movements of many persons, yet no statements of any such independent persons have been recorded.

p. There is a contradiction in the two complaints and the deposition of the complainant in as much as at one place it is stated that the accused no. 1 stopped him and gave him a stick blow above the ankle, while at another place it is stated that he was hit with the stick which was thrown after he had proceeded on scooter 3 to 4 ft. ahead.

9. It is in light of the aforesaid contradictory factors which have come on record, that the Trial Court has held that in absence of any independent witnesses the depositions of father and the brother of the complainant

could not be relied upon and that the complainant's version was full of discrepancies and contradictions and as such, the depositions of all the three persons who were related to each other had to be viewed and appreciated in light of the disputes which were existing in the past between both the parties, which is shown from the complaints, which have been registered against each other by both the parties in past. It is therefore, held that the prosecution has not been able to prove beyond doubt by independent evidence on record that accused no. 1 was involved in causing the injury in question to the complainant. It is further held that in so far as presence of accused nos. 2 and 3 is concerned there is no evidence available on record and as such, the charge of accused no. 2 having abused the complainant also cannot stand. The Trial Court has further held that in absence of any evidence in regard to presence of accused nos. 2 and 3 at the time and place of the alleged incident as well as the involvement in alleged offences it cannot be stated that there was any abetment with each other amongst the three accused. Accordingly, the Trial Court has concluded that in absence of any direct or reasonable evidence which could link the accused with the alleged incident beyond doubt it was not possible for the Trial Court to hold that the prosecution had been able to establish the charges framed against the accused and hence, the Trial Court acquitted all the three accused.

10. On behalf of the appellant it is stated that the accused had a strong motive to commit the offence in question in view of the fact that the complainant, his brother and his father had scolded the accused for harassing and molesting the ladies of the family and as such, the Trial Court was in error in acquitting the accused. It was further contended that the Trial Court had not taken into consideration the realities of life that in such instances no outsiders would come forward and present themselves as witnesses to the incident and for this reason alone the evidence in the form of deposition of relations should not be discarded by stating that such witnesses are interested persons.

11. On behalf of the respondent accused Shri. K.R. Raval, relied upon the decision of Supreme Court in the case of Kora Ghasi, Vs. State of Orissa, (AIR 1983 Supreme Court 360) for the proposition that if the evidence against the accused is found to be slender and the view of the Trial Court while aquitting the accused could not be said to be not reasonably possible in the circumstances of the case it was not open to the High Court to reverse the order of acquittal, even if it was

possible to take a different view in the facts and circumstances of the case.

12. We have carefully gone through the order of the Trial Court alongwith various depositions, the Medical Certificate and other evidences on record. After taking into consideration the contentions raised on behalf of both the sides we do not find any infirmity with the reasoning and findings of the Trial Court and the facts and circumstances of the case do not warrant any interference with the conclusion & judgement of the Trial Court. The order of the Trial Court dt. 30.04.1992 acquitting the accused respondents of offences under Section 325, 504 and 114 of the Indian Penal Code read with Section 248 (1) of the Criminal Procedure Code is therefore upheld. The appeal is dismissed. Record and proceedings be returned.

(D.A. MEHTA,J)

/siji/